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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 AMY GITSON *et al.*,
18
19 Plaintiffs,
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21 v.
22 TRADER JOE'S COMPANY,
23
24 Defendant.

Case No. 13-CV-1333 VC

**JOINT STATUS UPDATE
REGARDING SCHEDULING OF
MANDATORY SETTLEMENT
CONFERENCE AND
[PROPOSED] ORDER**

Judge: Hon. Joseph C. Spero

TAC Filed: April 3, 2014
Trial Date: Not Set

1 In accordance with this Court's November 17, 2014 order, which is attached as Exhibit 1
2 to this Joint Status Update, Plaintiffs Amy Gitson and Deborah Ross and Defendant Trader Joe's
3 Company (collectively, the "Parties"), respectfully submit this Joint Status Update regarding the
4 scheduling of the mandatory settlement conference in this matter. As explained below, given
5 Judge Chhabria's extension of the stay until at least the next case management conference
6 (currently set for June 23, 2015), the Parties propose to submit a further joint status report to
7 Judge Spero within ten days of the next case management conference.

8 This matter was scheduled for a settlement conference on May 5, 2014. However, on
9 April 28, 2014, the Parties submitted a joint stipulation requesting that this Court vacate the
10 settlement conference. At the time, Trader Joe's had two motions pending—a motion to dismiss
11 Plaintiffs' Third Amended Complaint (Dkt. No. 82) and a motion to certify for interlocutory
12 appeal. (Dkt. No. 74.) A central issue raised by both motions was whether Plaintiffs have
13 standing to assert claims as to approximately 177 products they did not purchase. The Parties
14 requested a continuance of the settlement conference because they did not believe they were in
15 the position to engage in settlement discussions until this issue was resolved. On April 28, 2014,
16 this Court vacated the May 5, 2014 settlement conference and continued it until a date
17 approximately 60 days after the entry of an order on Trader Joe's motion to dismiss, or 60 days
18 after entry of an order on Trader Joe's motion to certify for interlocutory appeal.

19 On August 8, 2014, Judge Chhabria entered a single order on both motions. (Dkt. No.
20 101.) Judge Chhabria denied the motion for interlocutory appeal. (*Id.* at 2-3.) As to Trader Joe's
21 motion to dismiss, he stayed the entire case on primary jurisdiction grounds (*id.* at 3-4), and
22 denied the remainder of Trader Joe's motion to dismiss without prejudice to re-filing once the
23 stay is lifted (*id.* at 4). Judge Chhabria also set a case management conference for November 4,
24 2014,¹ at which he would revisit the propriety of maintaining the stay. (*Id.*) The November 2014
25 case management conference was subsequently rescheduled to March 24, 2015. (Dkt. No. 106.)
26 Accordingly, on November 17, 2014, this Court granted the Parties' request to further continue

27 _____
28 ¹ Judge Chhabria subsequently continued the case management conference scheduled for
November 4, 2014, to November 13, 2014.

1 the mandatory settlement conference previously scheduled in this action, and ordered the Parties
 2 to file a joint status report on the status of the stay ten days after the March 24, 2015 case
 3 management conference (April 3, 2015). (Dkt. No. 108.)

4 On March 20, 2015, Judge Chhabria granted the Parties' request to continue the current
 5 stay of this lawsuit at least until the next case management conference scheduled for June 23,
 6 2015. (Dkt. No. 113.) Accordingly, the Parties believe they still are not in the position to engage
 7 in meaningful settlement discussions and propose that they provide a further status update on the
 8 scheduling of the settlement conference after the June 23, 2015 case management conference.

9 In short, the Parties are in no different position than when they last submitted an update.
 10 Therefore, the Parties propose that within ten days of the next case management conference in
 11 this matter, which is presently scheduled for June 23, 2015, they will jointly submit a status
 12 update wherein they will report on (1) the status of the stay; (2) if the stay is lifted, whether
 13 Trader Joe's intends to re-file its motion to dismiss the Third Amended Complaint and, if so, by
 14 which date the Parties anticipate the motion will be resolved; and (3) if the stay is lifted and
 15 Trader Joe's refiles its motion to dismiss the Third Amended Complaint, the date by which the
 16 Parties propose to jointly contact Judge Spero's chambers to select a settlement conference date.

17
 18 Dated: April 2, 2015

O'MELVENY & MYERS LLP

19 By: s/ Kate Ides

Kate Ides

20 Attorneys for Defendant
 21 Trader Joe's Company

22 Dated: April 2, 2015

23 CLIFFORD LAW OFFICES, P.C.

24 By: s/ Colin H. Dunn

Colin H. Dunn

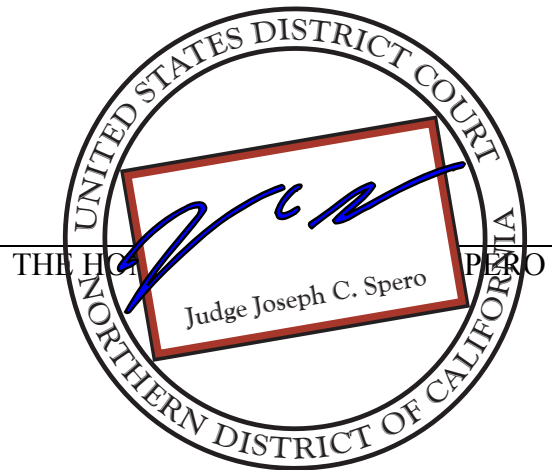
25 Attorneys for Plaintiffs
 26 Amy Gitson and Deborah Ross
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[PROPOSED] ORDER

Having reviewed the Parties' joint status update regarding the scheduling of the mandatory settlement conference in this matter, it is hereby ordered that within 10 days of the next case management conference, which is currently scheduled for June 23, 2015 the Parties will jointly submit a status update to this Court wherein they will report on (1) the status of the stay; (2) if the stay is lifted, whether Trader Joe's intends to re-file its motion to dismiss the Third Amended Complaint and, if so, by which date the Parties anticipate the motion will be resolved; and (3) if the stay is lifted and Trader Joe's refiles its motion to dismiss the Third Amended Complaint, the date by which the Parties propose to jointly contact Judge Spero's chambers to select a settlement conference date.

IT IS SO ORDERED.

Dated: 04/03/15



SIGNATURE ATTESTATION

The filing attorney attests that he has obtained concurrence regarding the filing of this document from each of the other signatories to this document.

Dated: April 2, 2015

O'MELVENY & MYERS LLP

By: /s/ Kate Ides

Kate Ides
Attorneys for Defendant
Trader Joe's Company

EXHIBIT 1

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Trader Joe's Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMY GITSON *et al.*,

Plaintiffs,

v.

TRADER JOE'S COMPANY,

Defendant.

Case No. 13-CV-1333 VC

**JOINT STATUS UPDATE RE:
SCHEDULING OF MANDATORY
SETTLEMENT CONFERENCE AND
~~PROPOSED~~ ORDER**

Judge: Hon. Joseph C. Spero

TAC Filed: April 3, 2014
Trial Date: March 23, 2015

JOINT STATUS UPDATE RE:
SCHEDULING OF SETTLEMENT
CONFERENCE;
13-CV-1333 VC

1 In accordance with this Court's order entered on September 3, 2014, and attached as
2 Exhibit 1, Plaintiffs Amy Gitson and Deborah Ross and Defendant Trader Joe's Company
3 (collectively, the "Parties"), respectfully submit this joint status update regarding the scheduling
4 of the mandatory settlement conference in this matter. On November 13, 2014, Judge Chhabria
5 continued the current stay of this lawsuit *at least* until the next case management conference
6 scheduled for March 24, 2015. Accordingly, the Parties believe they are not in the position to
7 engage in meaningful settlement discussions and propose that they provide a further status update
8 on the scheduling of the mandatory settlement conference after the March 24, 2015 case
9 management conference.

10 This matter was previously scheduled for a settlement conference on May 5, 2014. On
11 April 28, 2014, the Parties submitted a joint stipulation requesting that this Court vacate that
12 settlement conference. At that time, Trader Joe's had two motions pending—a motion to dismiss
13 Plaintiffs' Third Amended Complaint (Dkt. No. 82) and a motion to certify for interlocutory
14 appeal (Dkt. No. 74). A central issue raised by both motions was whether Plaintiffs have standing
15 to assert claims as to approximately 177 products they did not purchase. The Parties requested a
16 continuance of the settlement conference, because they did not believe they were in the position
17 to engage in meaningful settlement discussions until this issue was resolved. On April 28, 2014,
18 this Court vacated the May 5, 2014 settlement conference and continued it until a date
19 approximately 60 days after the entry of an order on Trader Joe's motion to dismiss, or 60 days
20 after entry of an order on Trader Joe's motion to certify for interlocutory appeal, whichever came
21 later.

22 On August 8, 2014, Judge Chhabria entered a single order on both motions. (Dkt. No.
23 101.) Judge Chhabria denied the motion for interlocutory appeal. (*Id.* at 2-3.) As to Trader Joe's
24 motion to dismiss, he stayed the entire case on primary jurisdiction grounds (*id.* at 3-4), and
25 denied the remainder of Trader Joe's motion to dismiss without prejudice to re-filing once the
26 stay is lifted (*id.* at 4). Judge Chhabria also set a case management conference for November 4,
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2014,¹ at which conference he would revisit the propriety of maintaining the stay. (*Id.*) And so, although Judge Chhabria rules on both motions, the pleadings in this matter remained unsettled.

Therefore, the Parties requested that this Court enter an order directing the Parties to submit a joint status update to this Court after the case management conference in November, wherein they would report on (1) the status of the stay; (2) if the stay is lifted, whether Trader Joe's intends to re-file its motion to dismiss the Third Amended Complaint and, if so, by which date the Parties anticipate the motion will be resolved; and (3) if the stay is lifted and Trader Joe's refiles its motion to dismiss the Third Amended Complaint, the date by which the Parties will jointly contact Judge Spero's chambers to select a settlement conference date.

On November 13, 2014, Judge Chhabria took the November case management conference off calendar and continued it to March 24, 2015, and did not lift the stay. In short, the Parties are in no different position than when they last submitted an update to this Court. Therefore, the Parties propose, that within ten days of the next case management conference in this matter, which is presently scheduled for March 24, 2015, they will jointly submit a status update wherein they will report on (1) the status of the stay; (2) if the stay is lifted, whether Trader Joe's intends to re-file its motion to dismiss the third amended complaint and, if so, by which date the Parties anticipate the motion will be resolved; and (3) if the stay is lifted and Trader Joe's refiles its motion to dismiss the Third Amended Complaint, the date by which the Parties will jointly contact Judge Spero's chambers to select a settlement conference date.

Dated: November 14, 2014

O'MELVENY & MYERS LLP

By: s/ Kate Ides

Kate Ides
Attorneys for Defendant
Trader Joe's Company

¹ Judge Chhabria subsequently continued the case management conference scheduled for November 4, 2014, to November 13, 2014.

1 Dated: November 14, 2014

CLIFFORD LAW OFFICES, P.C.

2 By: s/ Colin H. Dunn

3 Colin H. Dunn

4 Attorneys for Plaintiffs

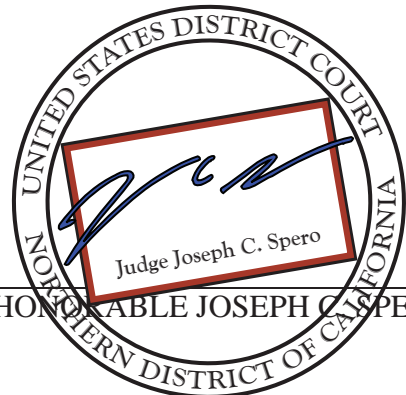
Amy Gitson and Deborah Ross

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6 **~~PROPOSED~~ ORDER**

7 Having reviewed the Parties' joint status update regarding the scheduling of the
8 mandatory settlement conference in this matter, it is hereby ordered that within 10 days of the
9 next case management conference, which is currently scheduled for March 24, 2015, the Parties
10 will jointly submit a status update to this Court wherein they will report on (1) the status of the
11 stay; (2) if the stay is lifted, whether Trader Joe's intends to re-file its motion to dismiss the third
12 amended complaint and, if so, by which date the Parties anticipate the motion will be resolved;
13 and (3) if the stay is lifted and Trader Joe's refiles its motion to dismiss the Third Amended
14 Complaint, the date by which the Parties will jointly contact Judge Spero's chambers to select a
15 settlement conference date.

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17 **IT IS SO ORDERED.**

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19 Dated: 11/17/14



20 THE HONORABLE JOSEPH C. SPERO

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JOINT STATUS UPDATE RE:
SCHEDULING OF SETTLEMENT
CONFERENCE;
13-CV-1333 VC